



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Signal Corporation

File: B-241849; B-241849.2; B-241849.3

Date: February 26, 1991

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William L. Walsh, Jr., Esq., Venable, Baetjer & Howard, for Techmatics, Inc., an interested party.

Elliott B. Branch, Department of the Navy, for the agency.

Susan K. McAuliffe, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency conducted an improper cost realism analysis of protester's best and final offer for cost-type contract is denied where record shows that upward adjustment of protester's indirect costs was reasonably based on most recent actual cost rates of protester and where protester did not submit sufficiently convincing financial data to support substantially lower rates.

2. Discussions were meaningful where agency imparted sufficient information to protester to afford it a fair and reasonable opportunity to identify and correct any deficiencies in its proposal and written discussion questions were designed to guide protester into those portions of its proposal that required amplification.

3. Protest that awardee's offer is unbalanced is without merit since the concept of unbalanced bidding generally is not relevant in a negotiated procurement in which award is based upon evaluation of cost and technical factors with technical factors considered more important than cost, and where review of awardee's proposed prices for cost-plus-fixed-fee contract reveals no evidence that proposed prices are nominal for some requirements and enhanced for others, but rather that slightly lower prices in option years reasonably reflect the awardee's proposed labor mix, including the use of qualified lower cost personnel, as permitted under the solicitation's terms.

DECISION

Signal Corporation protests the award of a contract to Techmatics, Inc. under request for proposals (RFP) No. N00024-89-R-3453(Q), issued by the Department of the Navy as a small

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business set-aside for engineering, management, and technical support for the Submarine Acoustic Warfare Systems (SAWS) program. Signal principally contends that the agency improperly inflated Signal's proposed indirect costs during its cost realism analysis. The protester also contends that the technical evaluation, which allegedly favored the awardee, was based on unstated evaluation criteria and that the agency failed to conduct meaningful discussions with Signal. Finally, the protester argues that Techmatics' proposal should have been rejected as materially unbalanced. We deny the protest.

BACKGROUND

The RFP, issued on September 12, 1989, contemplated the award of a cost-plus-fixed-fee contract for a base year period plus 4 option years. The RFP's Statement of Work (SOW) listed the 29 individual systems, equipment and acoustic warfare initiatives which constitute the SAWS program and which are to be supported by the awarded contract. The RFP required offerors to submit cost and technical proposals. Section M of the RFP set forth three main evaluation factors for award: (1) technical approach; (2) experience; and (3) management approach. Offerors were advised that the technical criteria were significantly more important than cost, and that technical approach was significantly more important than experience and management approach combined. Subcriteria for each evaluation criterion were listed in descending order of importance.

The RFP provided that cost proposals would be evaluated in terms of projected cost to the government, considering the realism, reasonableness, and validity of the proposed costs. The RFP further provided that in exercising its judgment to estimate the overall cost to the government, the agency would consider the reasonableness of the proposed labor rates and labor mix, as well as the completeness, accuracy, and thoroughness of the total cost proposed. The RFP permitted the payment of a cost premium for a technically superior proposal, and provided a formula allowing the payment of a 35 percent premium for a proposal with the highest achievable technical/ management score when compared to the lowest possible technically acceptable score. Award was to be made to the responsible offeror that submitted the proposal with the combination of technical merit and cost considered most advantageous to the government.

Four proposals were received by the October 27 closing date. Three of the four proposals were found technically acceptable, and those offerors were determined to be within the competitive range. Written discussion questions were issued to these three offerors, including Signal, on June 15, 1990.

The offerors' responses to the discussion questions were submitted on July 2. Best and final offers (BAFOs) were received on August 2. Techmatics' technical proposal was ranked highest, as technically outstanding. Signal's technical proposal was determined to be in the technically acceptable range. Cost realism evaluations resulted in the upward adjustment of all three BAFO cost proposals. Signal's BAFO, as adjusted, was evaluated as offering the highest cost to the government. Techmatics' evaluated cost as compared to the low evaluated offeror was determined to be within the cost premium payable for technical superiority, and a contract was awarded to Techmatics on October 15, for \$6,306,454. On October 25, Signal filed its protest with our Office. The agency reports that performance of the awarded contract was suspended on October 26. Signal supplemented its protest on December 6 and 11 based upon information it obtained from the agency's report responding to Signal's initial protest. A consolidated discussion of the issues raised in the three protest submissions follows.

COST REALISM ANALYSIS

Signal challenges the agency's cost realism analysis of its proposed costs. The protester contends that the agency improperly inflated the indirect costs it proposed in its BAFO.^{1/}

At the time initial proposals were received, the Defense Contract Audit Agency (DCAA) had approved Signal's initially proposal overhead and general and administrative (G&A) rates (based on estimates of actual rates experienced through June 30, 1989) as projected rates for provisional billings only. Signal substantially lowered its proposed rates in its BAFO in which the protester explained that it had recently acquired contracts that significantly expanded its business base and allowed it to greatly reduce its proposed indirect costs. Signal did not submit its BAFO rates to DCAA for approval, but instead stated that they would be submitted if Signal were awarded a contract under the RFP.

On August 23, the agency requested confirmation of Signal's significantly lower BAFO costs and requested a cost summary

^{1/} Signal also challenges the agency's application of a 4 percent escalation rate for its proposed direct labor costs for the option years. We find no merit to this contention. We merely note that the same escalation rate was equally applied to all offerors' proposed base year costs, and Signal did not otherwise provide financial documentation to show that its costs would not be affected by inflationary factors over the course of the contract.

sheet of the protester's proposed costs. On August 24, DCAA performed a rate check of those proposed costs. The DCAA auditor requested Signal's actual indirect and direct costs for 1989 and its year-to-date actual rates for 1990. Signal submitted its 1989 actual rates, but stated that the 1990 actual rates were not yet compiled. The 1989 actual rates, however, were approximately 50 percent higher than Signal's BAFO rates. Additional information also showed that a DCAA audit of June 3, 1989, specified overhead and G&A rates for Signal which were twice as high as the BAFO rates proposed by the protester. The DCAA auditor informed the Navy that due to the lack of historical financial information for Signal's BAFO indirect rates, DCAA could not audit, verify or recommend those rates to the Navy in making its probable cost determination. DCAA reports that although it may have approved the procedure Signal used to calculate its BAFO rates and forecasting, it at no time approved the proposed BAFO rates themselves.

In reviewing Signal's BAFO costs for realism the Navy adjusted Signal's overhead and G&A in accordance with the December 31, 1989 actual rates since they were the most recent historical actual rates available. The provisional rates accepted at the time of initial proposals were not used for determining the realism of Signal's BAFO rates because the 1989 year-end actuals were more recent and were considered more reliable.

When an agency evaluates proposals for the award of a cost reimbursement contract, the offerors' proposed estimated costs of contract performance are not considered as controlling, since they may not provide valid indications of the actual costs which the government is, within certain limits, required to pay. Federal Acquisition Regulation (FAR) § 15.605(d); Bendix Field Eng'g Corp., B-230076, May 4, 1988, 88-1 CPD ¶ 437. Consequently, an agency's evaluation of estimated costs properly should consider the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. Arthur D. Little, Inc., B-229698, Mar. 3, 1988, 88-1 CPD ¶ 225. We limit our review of these matters to determining whether an agency's cost evaluation was reasonably based and not arbitrary. Pan Am World Servs., Inc., et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446.

Here, we have reviewed the record regarding the Navy's evaluation of Signal's cost proposal and conclude that it was reasonable. Section L of the RFP instructed offerors that "[t]he burden of proof for cost credibility rests with the offeror." Under the RFP, DCAA-recommended rates for labor and indirect costs would be used in evaluating the most probable cost to the government, except where the offeror provided convincing evidence to support the use of other

rates. We cannot find that Signal provided the required convincing evidence to support its dramatically reduced BAFO rates. Although Signal stated that it recently received several contract awards that allowed it to reduce its rates, it did not adequately document this claim. The record shows that some of the new contracts are for a relatively short duration, and Signal has received only a limited amount of initial funding for some of the work. Without more in-depth financial worksheets supporting Signal's forecasting or more recent actual rates, which Signal was required to provide under the RFP, we cannot find the agency's reliance on the 1989 actual rates unreasonable. Further, by not providing convincing support in its BAFO for the significant decrease in its BAFO price, Signal assumed the risk that questions as to probable cost might be raised and that it would not be provided an opportunity to answer those questions. In such circumstances, the agency has no obligation to reopen negotiations so that the offeror can attempt to substantiate changes introduced in a BAFO. See Ferranti Int'l Defense Sys., Inc., B-237555, Feb. 27, 1990, 90-1 CPD ¶ 239.2/

EVALUATION AND DISCUSSIONS

Signal contends that the technical evaluation was based on unstated evaluation criteria because information known only to an incumbent was sought and evaluated while the RFP only required general information about the support services proposed for the SAWS program as a whole. Signal contends that its proposal was improperly downgraded as "too generic" for failing to detail how it proposed to support each of the individual SAW projects which constitute the SAWS program. Signal argues that since the RFP did not provide detailed information about the individual programs (i.e., the 29 systems, equipment and initiatives listed in the SOW), and since the protester's request for a "reading room" to obtain such details was denied, only the incumbent contractors had detailed information about the daily operations of each project. Signal claims the evaluation therefore favored Techmatics, which subcontracted with three incumbent contractors for this requirement.

The Navy states that the technical evaluation process did not employ unstated evaluation criteria and that although offerors

2/ As for an alleged \$566,000 mathematical error Signal contends exists in the agency's calculations of its evaluated costs, although that error cannot be readily verified from the record before us, we do not find that Signal would be prejudiced by such an error since the protester's proposal still would have been more costly, as correctly evaluated, than Techmatics' technically superior proposal.

were not expected to be extremely knowledgeable of the individual SAWS programs, the RFP did require each offeror to provide some discussion of how it proposed to assign support to the 29 components of the collective SAWS program. The agency states that technical evaluators found that Signal's proposed staff (consisting of ex-Navy SAWS personnel) had sufficient knowledge of the SAWS program components to provide more information on how it proposed to support those individual programs.

In reviewing protests against the propriety of an agency's evaluation of proposals, it is not the function of our Office to independently evaluate those proposals. IBI Sec. Serv., Inc., B-238661, June 25, 1990, 90-1 CPD ¶ 589; Biological Research Faculty & Facility, Inc., B-234568, Apr. 28, 1989, 89-1 CPD ¶ 409. We will question the agency's technical evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the evaluation criteria listed in the RFP. See American Educ. Complex Sys., B-228584, Jan. 13, 1988, 88-1 CPD ¶ 30.

We find the record supports the reasonableness of the agency's technical evaluation and that the evaluation was consistent with the RFP's terms and evaluation. The bases for the differences in scores for the offerors are documented in the record. Basically, Signal received a satisfactory score rather than an outstanding score because the protester failed to provide sufficient information about its technical approach to give the evaluators a clear sense of how Signal would perform upon award of the contract. The RFP advised that although all aspects of the work could not be detailed in advance, proposals were to be sufficiently detailed to demonstrate the offeror's ability and understanding of the support needed for the listed SAWS programs. Signal's proposal, however, was general in nature and lacked required information regarding its methods of breaking down its work and staff to the various SAWS programs. We find unreasonable Signal's contention that such information was not requested in the RFP. Section L of the RFP, defining the required technical support elements, requested each offeror to discuss its approach, qualifications, and ability to provide the required support for "SAWS programs." Section L also requested an explanation of how the firm proposed to provide the support set forth in Section C of the RFP, which lists the individual SAWS projects and initiatives. Signal, in its business judgment, adopted a proposal approach that, although acceptable, did not fully describe its proposed work effort for the SAWS programs. We therefore have no basis to question the reasonableness of the agency's evaluation of Signal's proposal.

As for Signal's contention that Techmatics benefited from an alleged incumbency advantage since it subcontracted with incumbent firms with better knowledge of the daily functions of the SAWS programs, such advantage alone does not render the competition improper. An agency is not required to attempt to eliminate a competitive advantage that an offeror might have by virtue of incumbency, unless that advantage resulted from preferential or unfair action by the government. Wilkinson Mfg. Co., B-225280, Mar. 13, 1987, 87-1 CPD ¶ 284. The protester has not provided any evidence of unfair agency action here.

Similarly, the protester contends that since the agency did not inform Signal of the unstated evaluation criteria, the agency failed to conduct meaningful discussions with the firm regarding its perceived failure to provide sufficient detail as to how it proposed to support the individual SAWS projects.

For discussions in a negotiated procurement to be meaningful, contracting agencies must advise offerors in the competitive range of deficiencies in their proposals and afford them the opportunity to correct the deficiencies by submitting revised proposals. FAR § 15.610; Questech, Inc., B-236028, Nov. 1, 1989, 89-2 CPD ¶ 407. Agencies need not afford offerors all-encompassing discussions, or discuss every element of a technically acceptable proposal that received less than the maximum possible rating; rather, agencies need only lead offerors into the areas of their proposal which require amplification. S.T. Research Corp., B-233115, Feb. 15, 1989, 89-1 CPD ¶ 159.

The agency initially issued 10 discussion questions to Signal regarding its technical proposal, almost all requesting amplification of how Signal proposed to break down the work and assign personnel to support the SAWS program in accordance with the SOW and RFP instructions. Question 6 was withdrawn by the agency after Signal requested clarification and an extension of time to comply with the request. That discussion question basically consolidated the requests of the other discussion questions for more information about Signal's proposed support framework and how it "specifically applies to the individual SAWS projects." Question 9 sought information about Signal's proposed breakdown of work for "each individual SAWS project." That question was modified by the agency in response to Signal's concern that the term "projects" was not defined in the RFP and that it needed more programmatic and technical information to comply with the request. Accordingly, the agency modified its request and eliminated question 6 (since the information was requested in other discussion questions), and restated question 9 to request an expansion of Signal's organization and management plan and the

process to be used to assign personnel to support the "SAWS programs."

The record shows that each of the discussion questions paralleled the concerns of the technical evaluators during the review of Signal's technical proposal regarding the proposal's lack of sufficient detail about how the protester intended to meet the requirements of the contract. Signal responded to these questions with a BAFO that improved its technical proposal's numerical score. Despite the agency's withdrawal of question 6 and modification of question 9, we believe the discussion questions adequately led Signal to the concerns and weaknesses perceived by the agency (concerning the protester's management plans and specific processes to assign personnel to each program), and thus, in our view, discussions were effective and meaningful. The agency was not required to advise the protester how it could bring its proposal up to the level of the awardee's technically superior proposal. See generally Fairchild Weston Sys., Inc., B-229843.2; B-229843.3, June 3, 1988, 88-1 CPD ¶ 525.

ALLEGEDLY UNBALANCED OFFER

Finally, Signal contends that Techmatics' proposal should have been rejected as materially unbalanced because its proposed average hourly labor rate is lower in the last 2 option years than it is in the base year contract period. Signal suggests that these lower labor rates are understated and may not reflect the real cost to the government. Signal speculates that Techmatics may have reduced its option year rates because it will replace senior key personnel with less qualified personnel. In this regard, Signal also contends that Techmatics' proposal should be rejected under the RFP's prohibition against the substitution of key personnel.^{3/}

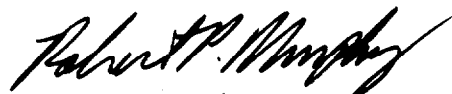
The Navy states that Techmatics' proposal complied with the RFP's key personnel requirement and that, although the awardee's average hourly labor rate decreases slightly in the last 2 option years, there is no indication that any of the proposed rates were understated for some requirements or

^{3/} Signal also contends that Techmatics' proposal should be rejected for violating the RFP's limitation on subcontracting of services for small business concerns, FAR § 52.219-14(a), which requires Techmatics to perform at least 50 percent of the work under the contract. Signal speculates that Techmatics proposes to subcontract more than 50 percent of the work to its incumbent subcontractors. The record, however, shows that Techmatics plans to perform in-house 54 percent of the RFP's manhours and 52 percent of the cost for the work. Thus, the record does not support the protester's contention.

enhanced for other requirements. The agency points out that Signal also lowered its proposed labor rates for all 4 option years from that proposed in the base year.

The concept of unbalanced bidding generally is not relevant in a negotiated procurement where, as here, award is based upon the evaluation of cost and technical factors with technical factors considered more important than cost. Systems Research Corp., B-237008, Jan. 25, 1990, 90-1 CPD ¶ 106. We have nonetheless reviewed the awardee's proposed rates and key personnel and find no evidence in the record to support the protester's speculation that Techmatics' proposal is materially unbalanced. Instead, we find that the awardee's slightly lower rates in the last 2 option years reflect cost savings from the awardee's effective use of Techmatics' staff and proposed labor mix. The RFP allowed offerors to propose the labor mix which they felt would ensure that the RFP requirements could be met while maintaining the same key personnel throughout the contract. Although their manhours did decrease somewhat over the option period, Techmatics proposed to retain its key personnel throughout the base and option years, with key personnel apparently remaining responsible for work performed by lower cost personnel who independently met the RFP's personnel qualifications. This approach, which does not render the proposal unbalanced, reflects the exercise of Techmatics' business judgment within the terms of the RFP.

The protest is denied.


for James F. Hinchman
General Counsel